

**SUMMARY OF TESTIMONY RECEIVED ON**  
**REGULATION 129 CMR 3.00: DISCLOSURE OF HEALTH CARE CLAIMS DATA**

	SECTION	TESTIMONY – KEY ISSUES RAISED	STAFF RECOMMENDATIONS AND COMMENTS
3.01	General Provisions		
3.02	Definitions	<p><b>The Massachusetts Department of Public Health (DPH) requests clarification of the definition of Public Unrestricted Data Element with section 3.03 (1)(b)3:</b></p> <ul style="list-style-type: none"> <li>▪ Public Unrestricted Data Element is defined as, “[a] data element that the Council may disclose to a requesting party without requiring the specifications and assurances relating to the Restricted Data Elements set for in 129 CMR 3.03 and 120 CMR 3.04...”</li> <li>▪ 129 CMR 3.03 (1)(b)3, “[t]he Data Release Review Board may direct the Executive Director and the staff of the Council to...approve applications for Public Unrestricted Data Elements that meet all of the requirements of 129 CMR 3.03, 3.04, and 3.05.</li> </ul>	<p>Rename data element categories Level 1, 2 and 3, as opposed to Public Unrestricted, Restricted, and Not for Release.</p> <p>Revise definitions to clarify that applicants for both Level 1 and Level 2 data must make assurances that they will protect the confidentiality and security of the data.</p>
3.03	Data Review Procedures	<p><b>Massachusetts Medical Society (MMS) recommends:</b></p> <ul style="list-style-type: none"> <li>▪ <b>3.03(1)(a):</b> The appointment of a practicing physician from the Medical Society to serve on the Data Release Review Board to represent statewide physicians and offer the Board resources and perspective.</li> <li>▪ <b>3.03(1)(b):</b> The Data Release Review Board shall establish criteria for the review of all applications for health care claims data, and oversee the Executive Director and Council staff regarding the follow: <ol style="list-style-type: none"> <li>1. Review of all applications for compliance with established criteria</li> <li>2. approval of applications for Public Unrestricted Data Elements that meet all the requirements of the Review Board and 129 CMR 3.03, 3.04, and 3.05</li> <li>3. Rejection of all applications for Data Not for Release.</li> <li>4. Referral to the Data Release Review Board for review of all applications for Restricted Data Elements and any other applications that the Executive Director or Council staff deem appropriate for the Board’s review.</li> <li>5. Preparation of materials for presentation to the Data Release Review Board and others.</li> <li>6. All data on the public website or requested and accepted by another entity for data release be reviewed by the relevant physician group at least 30 days before release and notification of this report be made to the MMS 30 days before release to facilitate a mechanism for</li> </ol> </li> </ul>	<p>Add a clinician to the Data Release Review Board.</p> <p>Do not change the procedure outlined in the regulation to meet these detailed requirements.</p> <p>Do not require all applicants to release data for review by physician groups. Data Release Review Board has the authority to include this</p>

		<p>physicians to correct errors.</p> <ol style="list-style-type: none"> <li>7. Statistical experts on the Data Release Review Board define the number of claims needed to derive data, but it be in excess of ten claims.</li> <li>8. Encourage the Council to focus its efforts more on releasing information to researchers, payers and provider organizations rather than proprietary organizations when considering requests. This would restrict the use of sensitive resources to those who are not motivated by profit.</li> </ol> <ul style="list-style-type: none"> <li>▪ <b>3.03(2)(c)(5):</b> The encryption of individual physician names to ensure the confidentiality of individual physicians.</li> </ul> <p><b>*The Massachusetts Department of Public Health (DPH) requests clarification of the definition of Public Unrestricted Data Element with section 3.03 (1)(b)3:</b></p> <ul style="list-style-type: none"> <li>▪ <b>129 CMR 3.03 (1)(b)3,</b> “[t]he Data Release Review Board may direct the Executive Director and the staff of the Council to...approve applications for Public Unrestricted Data Elements that meet all of the requirements of 129 CMR 3.03, 3.04, and 3.05.</li> </ul> <p><b>DPH suggests the following amendment to 129 CMR 3.03 (3):</b></p> <p>“(e) The Council may release unrestricted and restricted data to an agency of the Commonwealth to promote the public interest provided that the agency enters into a non-financial Interagency Service Agreement with the Council that allows for purposes and uses within the public interest, provides for security and measure to safeguard the confidentiality of patient information and includes relevant disclosure restrictions set forth in 129 CMR 3.04”</p> <hr/> <p><b>The Massachusetts Hospital Association (MHA) recommends:</b></p> <ul style="list-style-type: none"> <li>▪ 3.03 (1)(a): The inclusion of a hospital representative as a member of the Data Release Review Board</li> <li>▪ 3.03 (1)(b): An amendment in 129 CMR 3.00 and 129 CMR 4.00 so that professional organizations such as the MHA and the Massachusetts Medical Society are allowed the opportunity to preview the data prior to the release to the public.</li> </ul> <p><b>Blue Cross Blue Shield of Massachusetts (BCBSMA) recommends:</b></p> <ul style="list-style-type: none"> <li>▪ 3.03 (1)(a): Include a person with demonstrated expertise in the processes associated with academic research</li> <li>▪ 3.03 (2)(b)(5),(8): Identify specific privacy policies in the list of each section (3.02 (2)(b)(5),(8) <i>Application Review Procedures</i>), and add a statement that the Council has the right to audit the measures and policies</li> </ul>	<p>requirement where necessary.</p> <p>Increase the minimum cell size for data release to ten. Data Release Review Board may require applicants to demonstrate how they will calculate the minimum cell size; the Board does not need to hire a statistician to perform the calculation themselves.</p> <p>See clarification of definitions above.</p> <p>Add language to allow the Council to enter into an ISA with another state agency. The ISA would include the agency’s procedures for protecting the data and an ongoing list of projects for which the data would be used.</p> <p>Add a hospital representative, since most initial requesters of the data will probably be looking at hospital data.</p> <p>Do not share individual provider data with professional organizations prior to public release. Professional organizations may not represent all facilities or clinicians.</p> <p>Add a provision allowing the Council to audit confidentiality and security measures and policies.</p>
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3.04	Data Disclosure Restrictions	<p><b>Massachusetts Health Quality Partners (MHQP) recommends:</b></p> <ul style="list-style-type: none"> <li>3.04 (1)(c): Allow the use of identifiers to link the database with other databases</li> </ul>	Refer to future review.
3.05	Other Provisions	<p><b>Massachusetts Health Quality Partners (MHQP) recommends:</b></p> <ul style="list-style-type: none"> <li>3.05 (3)(b): Allow data fees to be waived for non-profit organizations as well as for researchers in certain cases</li> </ul>	Make non-profits eligible for fee waivers in hardship situations
3.06	Sanctions		
3.07	Administrative Bulletins and Severability		
Table 1	Member Eligibility Data Release	<p><b>Massachusetts Health Data Consortium (MHDC) recommends:</b></p> <ul style="list-style-type: none"> <li>Re-classification of the following categories: <ul style="list-style-type: none"> <li>ME001 – Payer should be unrestricted</li> <li>ME002 – National Plan ID should be unrestricted</li> <li>ME009 – Plan Specific Contract Number should be unrestricted</li> </ul> </li> </ul>	Refer to future review.

		<ul style="list-style-type: none"> <li>ME014 – Member Age in Years should be unrestricted</li> </ul>	
<b>Table 2</b>	<b>Medical Claims Data Release</b>	<p><b>Blue Cross Blue Shield of Massachusetts (BCBSMA) recommends:</b></p> <ul style="list-style-type: none"> <li>Table 2 Medical Claims Data Release: Change the release category for “MC066 Coinsurance Amount” from “Public Unrestricted” to “Restricted” or “Data Not For Release.” A simple mathematical extrapolation can easily identify a contract plan payment with this information.</li> </ul> <p><b>Massachusetts Health Data Consortium (MHDC) recommends:</b></p> <ul style="list-style-type: none"> <li>Re-classification of the following categories: <ul style="list-style-type: none"> <li>MC001 – Payer should be unrestricted</li> <li>MC002 – National Plan ID should be unrestricted</li> <li>MC008 – Plan Specific Contract Number should be unrestricted</li> <li>MC015 – Member State should be unrestricted</li> <li>MC023 – Member Age in Years at Discharge should be unrestricted</li> <li>MC024 – Service Provider Number should be unrestricted</li> <li>MC025 – Service Provider Tax ID should be unrestricted</li> <li>MC026 – National Service Provider ID should be unrestricted</li> <li>MC032 – Service Provider Specialty should be unrestricted</li> <li>MC062 – Charge Amount should be unrestricted</li> <li>MC063 – Paid Amount should be unrestricted</li> <li>MC064 – Prepaid Amount should be unrestricted</li> </ul> </li> </ul>	<p>Move “Coinsurance Amount” to Level 2 (Restricted) Data Element</p> <p>Refer to future review.</p>
<b>Table 3</b>	<b>Pharmacy Claims Data Release</b>	<p><b>Blue Cross Blue Shield of Massachusetts (BCBSMA) recommends:</b></p> <ul style="list-style-type: none"> <li>Table 3 Pharmacy Claims Data Release: Change the category for “PC041 Coinsurance Amount” from “Public Unrestricted” to “Restricted” or “Data Not For Release” for the same reasons as the coinsurance amount data from medical claims data release would be vulnerable.</li> </ul> <p><b>Massachusetts Health Data Consortium (MHDC) recommends:</b></p> <ul style="list-style-type: none"> <li>Re-classification of the above categories as it applies to the Pharmacy Claims Data Release elements</li> </ul>	<p>Move “Coinsurance Amount” to Level 2 (Restricted) Data Element.</p> <p>Refer to future review.</p>
	<b>Additional Issues</b>	<p><b>Blue Cross Blue Shield of Massachusetts (BCBSMA) recommends:</b></p> <ul style="list-style-type: none"> <li>Upon notification of a violation of any of the applicant’s terms, the Council report the incident to the Massachusetts Attorney General’s Office for investigation and appropriate sanction.</li> </ul> <p><b>Massachusetts Association of Health Plans (MAHP) recommends:</b></p> <ul style="list-style-type: none"> <li>The Council should seek out the means to enforce the provisions of the regulation by including language stating that upon violations of the regulatory</li> </ul>	<p>Research statutory enforcement provisions. Consider recommending new statutory language to the legislature.</p>

		<p>provisions, the Council will notify the Attorney General's Office to carry out enforcement actions as necessary.</p> <ul style="list-style-type: none"> <li>▪ The Council to consider the facilitation of access to the data across multiple state agencies to prevent duplicative data reporting and help reduce administrative costs.</li> </ul>	<p>Work with other state agencies to streamline data sharing and reduce duplicative reporting.</p>
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